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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Labar Spann

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

~~Heinz Peter Schater~~
Heinz Peter Schater
Kelly LNU Case Manager
Columbia Regional Care Center

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Complaint for Violation of Civil Rights

(Prisoner Complaint)

Case No. 2:18-cv-01778-DCC-MGB

(to be filled in by the Clerk's Office)

Jury Trial: ☒ Yes ☐ No
(check one)

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DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA, SC

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

When submitted for filing, your complaint should be accompanied by the full filing fee or an application to proceed *in forma pauperis*.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Lebar Spann
 All other names by which you have been known:

ID Number # 479-44-424
 Current Institution Livingston County Jail
 Address 844 West Lincoln Street Pontiac
IL 61764

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name Heinz Peter Schafer
 Job or Title Doctor
 (if known)
 Shield Number
 Employer Columbia Regional Care Center
 Address

7901 Farrow Road Columbia SC 29203

☐ Individual capacity

☐ Official capacity

Defendant No. 2

Name Kelly L.N.U

Job or Title
(if known)

Case Manager

Shield Number

Employer

Columbia Regional Care Center

Address

7901 Farrow Road Columbia
S.C. 29203

☐ Individual capacity

☐ Official capacity

Defendant No. 3

Name

Columbia Regional Care Center

Job or Title
(if known)

Medical facility

Shield Number

Employer

Columbia Regional Care Center

Address

7901 Farrow Road Columbia
S.C. 29203

☐ Individual capacity

☐ Official capacity

Defendant No. 4

Name

Job or Title
(if known)

Shield Number

Employer

Address

☐ Individual capacity

☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (*check all that apply*):

- ☒ Federal officials (a *Bivens* claim)
- ☐ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

Cruel in unusual Punishment

D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☒ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee

- ☐ Convicted and sentenced state prisoner
- ☒ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

Continued on
attached
Statement of Facts

While I was a patient in Columbia Regional Care Center
the medical specialist came down from Washington D.C.
On February 1st 2016 to investigate and research through my

- C. What date and approximate time did the events giving rise to your claim(s) occur?

February 8, 2016

- D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

See B above and attached Statement of Facts

Statement of Facts

1

Medical records to make sure that I was receiving the proper medical treatment while I was a patient in their care. After completion of their review of my files they noticed a picture that was taken of my wound dated back November 8, 2015 that looked infected. When they asked the facility was I ever treated for that infection the facility stated no. I never had an infection in that's when the specialist recommended that I go out and get a C.T scan. On February 17, 2016 I went out to get the C.T scan. That's when on the 2-18-16 the doctor Schafer and doctor Hart came into my room and doctor Schafer (stated that I had a bone infection Osteomyelitis) and that I need to see an Orthopedic doctor. Later on the same day doctor Schafer prescribed me to be put on antibiotics which initially caused a chemical reaction. So they had to stop it. On the 2-19-16 I was sent out to the emergency room at Richland hospital where I was spoken to by an Orthopedic Surgeon and a general Surgeon that reviewed my C.T scan and stated that I had to have two surgeries. On 2-22-16 I went to surgery where the general Surgeon drained one of the cysts. On 2-23-16 I went back to surgery with the Orthopedic in the plastic Surgeon where they shaved the bone to get the Osteomyelitis off and did a skin graft to close the wound. After the surgery I was put on a broad spectrum antibiotics which is I.V for 6 weeks and pill by mouth for 4 weeks. On 2-29-16 I was discharged from the hospital and transferred back to Columbia Regional Care Center. On March 1st doctor Schafer went to examine my wound he snatched the tape and opened the wound back up. Which stated nonstop bleeding so he try to stop it by putting stitches to close the wound up. As a result of that treatment I was subjected to further bandage change due to improper healing. On 3-7-16 I was sent back

continual 2

Statement of Facts

2

to the Richland hospital emergency room, where I was readmitted on 3-8-16 with fevers, chills, syncopal episode, dislodgement of staples with increased drainage from wound. The patient was found to be tachycardic, intermittently febrile, and with elevated WBC, on admission, meeting SIRS criteria with suspected source of left hip osteomyelitis. CT revealing increased inflammation and new fluid collection anterior and deep to JP drain placed previous admission. ID, plastic surgeon consulted. Presentation felt to be secondary to poor source control rather than failure of tachypneic, remains afebrile with normal WBC count, negative blood cultures. Patient has been on Vancomycin, levofloxacin, and Flagyl. Will be discharge on IV vancomycin and maxifloxacin 400mg PO daily on discharge per ID recommendations. Will continue vancomycin for total 6 weeks with start date 2-23-16 and stop date 4-5-16. Continue maxifloxacin for total 4 weeks with start date 2-23-16 and stop date 3-22-16. Plastic Surgery evaluated the wound and had recommended no further intervention and to keep JP drain which has had minimal output until outpatient follow-up with Dr. Chen scheduled for 3-23-16 at 1330. The patient is currently afebrile, not tachycardic or tachypneic, and white count has returned to normal with current antibiotic therapy. Medically stable for discharge back to facility. Do to the negligence of the facility Columbia Regional Care Center in Do to doctor Schafer in his substandard level of care I was subjected to pain in suffering. It wasn't until an outside agency came into the facility to review my records that they discovered doctor Schafer diagnosis was incorrect which cause me start yet other treatment regimen which is ongoing. Enclose please find copy of my hospital report that related to my complaint.

Statement of Facts

Case Manager Kelly L. NU

After being Mandated by the Northern District Illinois Chicago to receive Physical therapy of no more than 45 days at the Columbia Regional Care Center

Continual 3

Statement of Facts

3

I arrived at the facility on the evening of Oct 16, 2015 when I didn't leave to go back to Chicago for Court on 12-2-15 I called my attorney Todd Erban in was told that Case Manager Kelly L. Mill sent a misleading email to the Court stating that I was receiving treatment with a wound vac in that I would not be able to return to Court. knowing that a wound vac is a portable device in that I could have been present in Court in my Court was continued to 1-8-16. I appeared by teleconference to appear before the Judge in my case. The judge stated that why was I still down there in South Carolina. The U.S Attorney stated that I was still receiving medical treatment and the judge stated that I was not sent down there for medical treatment, for a long time and he continued my case to 2-10-16 and for me to be transferred back to Chicago. On 2-10-16 I again went to appear by teleconference. I was met by case manager Kelly L. Mill and doctor Schafer. There appeared to be confusion between case manager Kelly and doctor Schafer as to why they wanted doctor Schafer at Court. Case manager Kelly then went into another room and returned shortly with news that my Court had been canceled. When I got back to the unit I call my attorney to ask why we didn't have Court. My attorney then informed me that case manager Kelly misinformed someone at Court that they were having problems with getting me on video chat and that I was rescheduled because I had a C.T scan on the 12th. After the 12th passed without me going to get a C.T scan I was starting to view case manager Kelly L. Mill as having malicious intent because the C.T scan was approved by the facility but had not been approved by the U.S Marshal which she being the case manager had knowledge of. Which is a direct violation. On 3-16-16 I appeared back by teleconference before the Judge where case manager Kelly L. Mill

Continued 4

Statement of Facts

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testified that I was scheduled to go out to see a plastic surgeon to get a skin graft on my wound and then he placed me on antibiotics for 6 weeks and then I was to be confined to an electric wheelchair due to my shoulder injury and I won't be able to travel back to Chicago until after all my medical treatment was complete, that when I stated to the judge everything she just testified to was falsified information because my wound was closed and the specialist from Washington D.C. came down there to go over my medical records and determine whether proper medical procedures were being used. And they recommended for me to go out and the C.T scan and it came back that I had an infection and surgery was the only option and that why I went out to the hospital and can he please recommend that Dr. Schafer come to my next court appearance so that he can testify the true to what happened with me. And that when the judge asked case manager Kelly L. Miller how long she been working there and what was her job title. She stated that she is a R.N nurse and got promoted to be the case manager in had been for the last 18 months. The judge asked her when do my antibiotics end and she stated April 21st that's when the judge continued my hearing to April 23rd and asked that Dr. Schafer be present at the hearing. So on April 23 I appeared with Dr. Schafer where he testified that the specialist from Washington D.C. came to the facility and looked through my medical records and recommended that I go out to get a C.T scan. After the result came back from the C.T scan it showed that I had a bone infection of osteomyelitis where I was sent out for surgery. Then the judge asked him when will I be able to leave and be transferred back to Chicago and he stated that I got to go out and see the disease specialist in a week and will

Continual 5

Statement of Facts

5

be ready to return after I see the Disease Specialist. The judge then gave me A Continual until 5-15-16 on 5-8-16 my attorney received an email from the facility that stated that I had to stay in the facility because I got A Continuance to see the disease Specialist on 6-2-16 on 6-8-16 I appeared back in Court on telecon where the Marshalls read off an email that came from Case Manager Kelly L. Nill says that I was scheduled for another C.T Scan when I told the Judge that was false information he asked me was Dr. Schafer in the facility right now and I stated yes he is in his office right now because I just saw him. That's when he asked me to tell the officer could he get Dr. Schafer to come to the hearing. As we was waited on Dr. Schafer case Manager Kelly L. Nill came to the hearing and stated that the doctor was not in the facility to come to the hearing. That's when the judge continued my hearing to 6-29-16 on 6-29-16 I appeared at the hearing with Dr. Schafer on A phone Conference. The Marshalls started reading off A email that they received from Case Manager Kelly that stated that I had another infection and I was not able to leave the facility. That's when I notified the judge that was A false information the U.S Marshalls was telling him and that I have Dr. Schafer here to confirm that. In that's when Dr. Schafer testified that he doesn't know who sent that email and that I did not have any infection and I can return to Chicago as soon as possible. That's when the judge asked the U.S Marshalls how soon can they get me back to Chicago and they stated one week. On 7-6-16 at midnight the officers from the facility came in the middle of the night and packed my thing and drove me back to Illinois where they dropped me off at Livingston County Jail in Pontiac, Illinois. In Conclusion due to Case Manager

-> turn over

Kelly inability to state the truth I was subjected to A longer Period of hospitalization then would have been required, if the truth had been know earlier. Specifically She lied to the court about the course of testament and the situation going from bad to Worse an A caused me great Pain because of her incompetance, and inability to tell the truth.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

a bone infection Osteomyelitis where I was sent out to the hospital to get surgery one from the general surgeon where he when in and drained one of the cyst and then I went back to surgery with the orthopedic and plastic surgeon where they shaved the bone to get the Osteomyelitis and did a skin graft to close the wound

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Compensation for pain, suffering, cruel and unusual punishment \$5 million

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Columbia Regional Care Center

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

E. If you did file a grievance:

1. Where did you file the grievance?

Columbia Regional Care Center

2. What did you claim in your grievance?

Facility was negligent with treatment and care

3. What was the result, if any?

Facility investigator said the facility is liable for my injuries and will fix the problem so it will not happen again

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

No appeal

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If so, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes
☐ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s)

Labar Spann

Defendant(s)

Angy Kempf, Chad Kolitewenzew, Robert Skultz
Timothy, F Butowski, Marshal Roberts, Magistrate Judge Mason

2. Court *(if federal court, name the district; if state court, name the county and State)*

United States District Court Central District of IL

3. Docket or index number

2:15-cv-02159-JES

4. Name of Judge assigned to your case

James E Shadid

5. Approximate date of filing lawsuit

Jul 6 2015

6. Is the case still pending?

☒ Yes
☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

Pending

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

☐ Yes

☒ No

- D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) NA

Defendant(s) NA

2. Court *(if federal court, name the district; if state court, name the county and State)*

NA

NA

3. Docket or index number

NA

4. Name of Judge assigned to your case

NA

5. Approximate date of filing lawsuit

NA

6. Is the case still pending?

☐ Yes

☒ No

If no, give the approximate date of disposition. NA

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

NA

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 6-25, 2018

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

City

State

Zip Code

B. For Attorneys

Date of signing: _____, 20__.

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm